

Dear Honorable Justices of the Supreme Court:

I am writing in opposition to the application of Concord Law School/Kaplan University to amend Arizona's bar admission requirements to allow law school graduates of regionally accredited on-line universities to sit for the bar. I am a Clinical Professor of Law at the University of Arizona, James E. Rogers College of Law and Director of Clinics at the Law College. I have taught courses at five American Bar Association accredited law schools – the last 20 years as a full-time law professor at the University of Arizona. In addition, I have participated in six ABA re-accreditation site visits in which I was tasked, along with others, with reporting compliance with ABA accreditation standards.

I want to state at the outset that I write on my own behalf. Nothing that I write reflects any official position of the Law College. I also want to say that I have nothing against on-line learning. When done properly, on-line learning can offer significant benefits to students in both cost and flexibility. That said, there are reasons why the American Bar Association has never accredited a law school curriculum like Concord's that is 100% on-line. While I am empathetic to the issues raised by the current and former students commenting on the Concord/Kaplan application, the ABA reasons have significant merit.

I am troubled by some of the assertions in the Kaplan application and I am also troubled by the scope of its proposal. I would like to address three main issues:

1. Kaplan's regional accreditation, that includes the Concord Law School, is not law school specific; the accreditation is for Kaplan University as a whole. It would be incorrect to imply that regional university accreditation, in any way, assures the rigorous and appropriate law school curriculum and law school experience required of individually accredited law schools.
2. An on-line only curriculum, no matter how well implemented, cannot measure up to the overall learning experience required for nationally accredited schools. While many things can be learned well on-line; other critical law school experiences cannot.
3. Bar outcome measures are only one way of looking at law school success. That said, the Concord numbers in California are not encouraging.

Accreditation

Kaplan University is accredited. Concord Law School is not. Kaplan University is accredited by the Higher Learning Commission located in Davenport, Iowa – one

of six regional accreditation agencies recognized by the U.S. Department of Education. As stated on the HLC website, “*Regional accreditation validates the quality of an institution as a whole*”. Nothing in the regional accreditation process is law school or law degree specific.

As a 100% on-line law school, Concord is not accredited by either the ABA or by the State of California. Concord and all the other California on-line law schools fall in California Category 3 called “*registered unaccredited*” law schools. As a registered on-line law school, Concord is required only as follows:

(E) Educational Program. The law school must maintain a sound program of legal education.

(F) Scholastic Standards. The law school must maintain sound scholastic standards and must as soon as possible identify and exclude those students who have demonstrated they are not qualified to continue. Rule 4.240 California Law School Rules.

In stark contrast, ABA accreditation requires, among other things, a rigorous first year and advanced writing experience, a course in professional responsibility, a law library, six credits of experiential learning with faculty observation and feedback, significant clinical and/or field placement opportunities with self-reflection requirements, and pro bono opportunities. See Chapter 3 Program of Legal Education, American Bar Association 2016-2017 Standards and Rules of Procedure for Approval of Law Schools.

ABA accreditation requires specifically articulated learning outcomes and assessments to measure legal knowledge, legal reasoning, problem solving, legal writing and oral communication, professional and ethical responsibilities to clients and the legal system, and specialized legal skills training. As a registered on-line law school, Concord is not required to identify any learning outcomes.

For admission to an accredited law school, each applicant must take a “valid and reliable admission test” which can include the LSAT or the GRE or other standardized test. Concord does not use standardized tests for admission. It uses its own internal test.

I am not commenting on the quality of the Concord Law School curriculum. I have no clue whether a Concord Law education is comprehensive or effective. What I comment on is that, as an unaccredited institution, there are no standards nor any mechanism to ensure that Concord and all the other on-line law schools

meet the quality educational foundation that we all want our Arizona lawyers to possess before practicing in our state.

The Arizona Supreme Court has had a longstanding commitment to high quality law school accreditation standards. Justices McGregor, Berch, and now Justice Bales have all served on the ABA standing committee with oversight on law school accreditation standards. Justice Timmer recently served on an ABA re-accreditation site visit at a major law school. Justice Pelander served on Arizona Law's last dean search. Knowing the Court's commitment to quality legal education standards, I trust that the Kaplan/Concord application will be examined with quality education in mind.

On-line only curriculum

Perhaps none of the extensive national accreditation standards would matter if learning how to be a lawyer were as simple as changing the tire on a bicycle. There much to be said for the convenience, cost and flexibility of on-line learning for information based subjects – especially when looking at access to legal education for minorities and poor persons. Indeed, much of my own school's mining law curriculum is on-line.

However, there is so much more to a quality legal education than absorbing information. Advocacy skills, client relationships, professionalism, problem solving skills cannot be acquired and developed by sitting in front of a computer alone. I am certain that each Justice on the Court remembers how much learning took place outside of the classroom in trial and practice or in law review or moot court or a clinic or simply sitting around at lunch talking with classmates. And I am equally certain that each Justice has a Socratic memory where the Professor took students to a new place with just the right in-the-moment question based on the class dynamic. Law school should be a rich interactive experience. That experience cannot be re-created on-line alone.

I teach Professional Responsibility as well as clinic legal education. I love the class but I know the limitations of teaching professional values in a lecture setting. Students can certainly rote learn ethics rules by reading and attending on-line lectures. But learning the rules is a minimum goal – a first step.

Students rarely appreciate the values behind the rules or how hard it is to do the right thing under the pressures that lawyers face unless they can experience the rules in context. In my class, I use many interactive exercises that involve students in simulations, discussions, and small groups. I could not duplicate those experiences for on-line students.

More importantly, however, appreciation for professional values rarely takes hold until students have actual live client or applied experiences in our clinics, field placements and skills classes where students have hands-on interaction and direct faculty feedback. Last year, Arizona Law was selected as the Number 4 school in the nation for practical learning. Of course, we are proud of the designation. But we are prouder of how are students grow as lawyers when they have opportunities to use their knowledge in settings that stretch their limits. Most, if not all, of those opportunities are not available in a 100% on-line curriculum.

Bar results

If being a lawyer were just about passing the bar then, perhaps, an on-line only law school might be a welcome foundation for entry into the profession.

But as the bar exam becomes more sophisticated, the data suggests that on-line education alone does not sufficiently prepare most students to pass the exam. In last summer's California Bar Exam, only 27% of first time Concord students passed the bar. That is compared to an overall rate of 62% for ABA accredited law schools in California. Only 16% of repeat bar takers from Concord passed

These numbers are disturbing. To its credit, Concord graduates fared better than those from the other on-line law schools. However, the proposed rule applies to all on-line schools. It would be a shame to set up a high percentage of students to fail. See page 3 on document below:

<https://assets.documentcloud.org/documents/3237100/CAL-LAW-SCHOOLS.pdf>

In sum, while on-line learning can effectively supplement a quality legal education, Kaplan has not demonstrated sufficiently that on-line only produces the quality education foundation we would want for Arizona's future lawyers.

Thank you for your consideration of these comments.

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